

Office of Equal Employment Services

Annual Report for FY2015 through FY2016

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Brief Bio: George E. Gardner has served as Director, Office of Equal Employment Services since April 1983. He received his BS and Master of Education degrees from Virginia Commonwealth University. He is a graduate of the Virginia Executive Institute, and has received certification in Employee Relations Law, Employment Law, and is a Senior Professional in Human Resources (SPHR).

I. Office Mission Statement

This statutorily mandated service area is responsible for the administration of a comprehensive equal employment opportunity program for executive branch state agencies. This includes the investigation/resolution of complaints of illegal discrimination filed by state employees and applicants for state employment, as well as the administration of a compliance program to determine whether agencies' human resource management practices result in disparate impact against persons of protected classes. In addition, this service area provides training and technical guidance to state agencies and local governments concerning equal employment opportunity related matters. Moreover, this service area is responsible for responding to appeals of hearing officers' rulings from grievant and agency management officials concerning rulings comportment with state human resource management policies and procedures.

Equal employment opportunity is an integral component of human resource management. Federal and state anti-discrimination laws prohibit discrimination in all privileges and conditions of employment.

II. OEES Overview

A. Organization and Staffing

The service area unit is staffed with seven professionals and two administrative support staff (wage).¹

Full-Time Equivalent (FTE) Position Summary

Total Authorized Position Level	5
Vacant Positions.....	1
Full-Time Classified (Filled).....	4
Wage.....	5
Contract Employees.....	0
Total Human Resource Level.....	10

B. Mandates

Code of Virginia at § 2.2-1201(10), Equal Employment Opportunity, establishes and administers a program to assure equal employment opportunity to applicants and to state employees in all incidents of employment;

Governor's Executive Order No. 1 (2014), Equal Employment Opportunity, prohibits state agencies from engaging in unlawful employment discrimination and authorizes OEES to investigate and resolve such complaints;

Code of Virginia at § 2.2-1201(9), Evaluation of Personnel Activities, establishes and administers a program of evaluation of effectiveness of performance of the personnel activities of the agencies;

29 U.S.C. §§ 621-633(a), Age Discrimination in Employment Act of 1967, as amended, prohibits discrimination in all privileges and conditions of employment against persons age 40 and over;

42 U.S.C. Chapter 126, Americans with Disabilities Act of 1990, prohibits discrimination in all privileges and conditions of employment against qualified persons with a disability;

¹ Organization Chart at Appendix A

PL 110-325, 2008 § 3406, ADA Amendments Act of 2008, carries out the ADA's objectives of providing a clear and comprehensive national mandate for the elimination of discrimination and clear, strong, consistent, enforceable standards addressing discrimination by reinstating a broad scope of protection to be available under the ADA;

42 U.S.C., 2000ff, The Genetic Information Nondiscrimination Act of 2008, prohibits discrimination in health coverage and employment based on genetic information;

29 U.S.C. § 206, Equal Pay Act of 1963, prohibits differentiation in pay for equal work based on gender;

8 U.S.C. 1324 a & b, Immigration Reform and Control Act of 1986, prohibits discrimination based on national origin and citizenship status in all privileges and conditions of employment;

PL 111-2, 2009 §181, 123 Stat 5 (2009) Lilly Ledbetter Fair Pay Act of 2009, amends Title VII of the Civil Rights Act of 1964 (42 USC 2000e-5(e)), the Age Discrimination in Employment Act of 1967(29 U.S.C. 626(d)), the Americans With Disabilities Act of 1990 (42 U.S.C. 12111 et seq., 12203) and the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)) to declare that an unlawful practice occurs when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to the decision or other practice, or when a person is affected by the decision or practice, including each time wages, benefits, or other compensation is paid;

42 U.S.C. 2000(e)(k), Pregnancy Discrimination Act of 1978, requires employers to treat women affected by pregnancy, childbirth, and related medical conditions, the same as other employees for all employment related purposes;

42 U.S.C. 2000h 2, Title IX of the Education Amendments of 1972, prohibits discrimination based on gender in all privileges and conditions of employment in education programs or activities that receive federal financial assistance;

42 U.S.C. 2000C-2000E-17, Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in all privileges and conditions of employment due to race, color, national origin, gender (including sexual harassment), and religion;

29 U.S.C. § 1607.18, Uniform Guidelines on Employee Selection Procedures, requires employers to determine whether tangible employment practices result in disparate impact against minorities and women, and to take affirmative corrective action if found; and

Code of Virginia at Chapter 413§ 2.2-2903 amended (05), Veterans Preference, requires that “additional consideration” shall be given to veterans who have a service-connected disability rating fixed by the United States Veterans Administration.

III. Functional Activities

A. EEO Complaint Procedure

Responsible for the investigation /resolution of complaints of illegal discrimination filed by state employees (classified, faculty, wage, probationary, certain employees of 119 local health departments and 124 local social service agencies) and applicants for state employment.

- Received 47 complaints of discrimination, involving approximately 118 separate and distinct allegations of illegal discrimination (i.e., race, gender, age, retaliation, sexual harassment, religion, national origin, sexual orientation, disability, political affiliation, and veteran's status).
- Investigated and/or resolved 41 complaints consisting of approximately 82 allegations of unlawful discrimination within an average of 150 days. No determinations were overturned upon appeal.

A. EEO Compliance Program

Responsible for ensuring executive branch state agencies compliance with all federal and state anti-discrimination laws/regulations. The Commonwealth's Equal Employment Opportunity Compliance Program consists of, among other things, the EEO Assessment Tool, EEO Calculator, and Applicant Flow component. These web-based tools include all of the statistical applications sanctioned by the US Supreme Court and the federal Equal Employment Opportunity Commission (EEOC) for determining whether agencies' employment practices result in adverse impact against protected groups. The purpose of the EEO Assessment Tool is to ensure fairness and equity in all tangible employment practices, ensure compliance with all relevant federal and state laws/regulations, and provide agencies with the ability to review proactively their employment practices.² The EEO Calculator provides agencies with the means to assess potential disparate impact against minorities, women, older employees (40 yrs. and older), and veterans concerning the prospective implementation of certain employment practices, including layoffs, in order to ensure fairness and equity. The Applicant Flow component is designed to determine whether agencies' hiring practices result in disparate impact against the aforementioned groups.

² List of tangible employment practices at Appendix B.

- Identified 143 agencies with 684789 indicators of disparity (Red) and 130 agencies with 583 indicators of disparity by July 29th of each of the relevant fiscal (FY 2015- FY2016) years, respectively. The Department of Human Resource Management (DHRM) Strategic Plan measurement requires that agencies be notified by July 31st each year.
- Required each agency to submit either a legitimate non-discriminatory explanation or a corrective action plan designed to eradicate the disparity for each Red. DHRM's Strategic Plan measurement requires completion of reviews within 30 days of receipt of additional information. Completed the review of approximately 93.7% of the agencies' submissions within 30 days of receipt of additional pertinent information in FY15. As a result of the FY15 compliance review, 98% of all executive branch agencies were in compliance with all federal/state laws/regulations concerning non-discriminatory employment practices.
- Provided technical assistance and/or counseling to 100% of all agencies that either requested assistance or were identified as needing assistance in responding to their indicators of Red in FY 15. DHRM's Strategic Plan measurement requires counseling for 100% of agencies with indicators of Red.

Conducted one training session for agencies' human resource management and EEO staff on the EEO Compliance web-based applications (Applicant Flow, EEO Assessment Tool, and EEO Calculator) and how to respond to indicators of adverse impact in FY15. 100% of the respondents rated the training as Good or Better.

- The Commonwealth's EEO-4 Report is submitted every odd-numbered year. Therefore. The next Report is due in September 2017.

C. Grievance Appeal Process

Responsible for responding to appeals from either grievant or agency management officials' concerns that the hearing officers' ruling are inconsistent with DHRM's and state agencies' human resource management policies.

- Issued 36 rulings, on behalf of the Director of DHRM, addressing appeals to hearing officers' rulings within an average of 20 days of receipt of all pertinent information. The Code of Virginia mandates that such appeals be addressed within 30 days of receipt of all pertinent information. Upon appeal to the Circuit Court regarding policy issues, no DHRM rulings were overturned.

D. Technical Assistance and Outreach

Responsible for providing technical assistance to agency management officials and serve as a clearinghouse for equal employment opportunity related information to state employees and citizens of the Commonwealth.

- Provided approximately 160 incidences of technical guidance to state agencies (executive and nonexecutive branch), and local governments to facilitate their compliance with federal EEO laws/regulations, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, the Uniform Guidelines on Employee Selection Procedures (a progeny of Title VII), Title IX of the Educational Amendments of 1972, the Immigration Reform and Control Act, President's Executive Order 11246, Americans with Disabilities Act, Age Discrimination in Employment Act, the Equal Pay Act, the Genetic Information Nondiscrimination Act and the Pregnancy Act. Sample survey revealed that 100% of the respondents rated OEES services at five or better on a six-point Likert scale. The DHRM standard is 90% of the respondents' ratings at four or better on a six-point Likert scale.

E. EEO Training

Due to budget constraints, the DHRM eliminated its training unit and training facility. As such, OEES has suspended its training programs.

F. Special Projects

Participates in Special Projects/Assignments

- Commonwealth-At-A-Glance
This web-based application provides state and agency managers with easy access to current statistics and trend data relating to a variety of human resource management activities. Categories of statistics include employment levels, employee demographics, occupational distributions, recruitment, retention, compensation, recognition, performance management, training and development, health and safety, community service, fairness and equity, and management. Data for each agency is provided to that agency's management, along with statewide data for comparison. Provide annual updates for percentage of green (compliance with relevant federal and state laws/regulations) statewide and at executive branch agencies in fairness and equity in the implementation of each employment practice.
- HR Management Scorecard – Fairness & Diversity
The Scorecard reports the effectiveness of state agency management in six critical categories: Human Resource Management, Government Procurement, Financial Management, Technology, Performance Management, and Resource Stewardship. Agencies assessed their performance in each of the categories. Agencies' self

assessments submitted to the Cabinet Secretaries were reviewed to determine whether management policies and practices were applied fairly and consistently in accordance with the most recent EEO Compliance review.

- **State's Recruitment Management System (RMS)**
The objective of this project is to plan the successful transition from PeopleAdmin (PA) 5.8 to the functionality of PA7. The State's Recruitment Management System (RMS), in part, was designed with the intent of providing agencies with an on-line recruitment system including the capacity of accepting electronic applications. RMS data is migrated to EEO Compliance web-based applications. During this transition, it is essential to insure the import of pertinent data to meet DHRM and its customers' needs while preserving data integration with existing applications and site customizations.

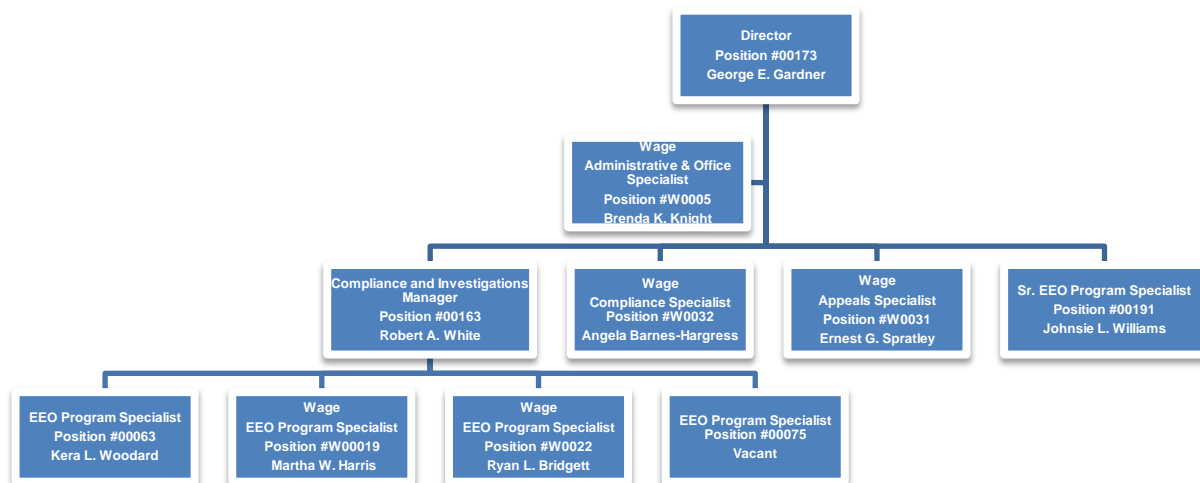
G. Challenges and Opportunities

- **Insufficient Resources**
Lack of staff resources and operating funds to make needed enhancements to the EEO Assessment Tools, resurrect the basic EEO training program, and to support staff's professional development, and to implement new initiatives.

- **Succession Planning**

The OEES Director and the Senior State EEO Specialist are eligible to retire. The Assistant Director and the EEO Compliance Manager retired in January and April 2016, respectively. We filled the EEO Compliance Manager's position in May 2016 and former incumbent (wage) is providing guidance/training to the new employee. We have advertised the Assistant Director's position as an entry level State EEO Specialist. Due to budget reduction, lost two positions in FY14-15. Therefore, there is no staff to train with respect to succession planning.

Office of Equal Employment Services



As of August 29, 2016

Employment Practices

- **Applicant Flow** - The collection of applications for a vacant position that are considered for selection for interview. Selection for interview includes all applicants screened in and offered an interview, regardless of whether the applicant declines the interview, cancels or does not show up for the interview.
- **Candidate Selection** - Any offer of employment regardless of whether the applicant declines or accepts the offer.
- **Standards of Conduct** - Action taken to address employment problems, such as unacceptable employee performance and/or behavior.
- **Involuntary Terminations** - The discharge of an employee for reasons other than layoff.
- **Training** - Instruction provided to stimulate change. Its focus is short-term and directed solely at furnishing knowledge or skills that employees need to carry out their present work duties efficiently and effectively.
- **Appeal of Employment Practices** - The filing of a formal grievance or complaint of discrimination pertinent to an employment practice.
- **Role Changes** - When the duties and responsibilities of an employee warrant reclassification to a higher role in a higher pay band or a lower role in a lower pay band.
- **New Hires/Rehires** - The results of a competitive selection process where the successful candidates are new employees and/or rehires to the agency.
- **Promotions** - The results of a competitive selection where an employee moves to a higher pay band.
- **Voluntary Transfer** - When an employee moves within the same role or to a different role in the same pay band as a result of a competitive selection or non-competitive process.
- **Performance Management** - The annual appraisal of employees' work performance.
- **Recognitions** - Individual or team recognition for outstanding achievement or accomplishment for an event, project or task, and the attainment of a job-related degree, certification or licensure.

- **In-Band Adjustments** - A base salary increase subsequent to a change in duties, professional/skills development, employee retention, internal alignment, lateral role change and temporary pay.
- **Voluntary Demotions** - The results of a competitive selection or non-competitive process when an employee moves to a lower pay band.